

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Brian A. Batke

Art Unit: 2157

Serial No.: 09/967,124

Examiner: Hussein A. El Chanti

Filing Date: September 28, 2001

Customer No. 63122

Title: Embedded Web-Accessible Industrial
Control System

Atty. Dkt. No.: 01AB074 (1506.040)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

A Notice of Appeal is filed concurrently herewith. Applicant hereby requests pre-appeal review of the final rejection in the above-identified application. No amendments are being filed with this request. The review is requested for the reasons set forth below.

REMARKS

Claims 1-5, 10, 15-20 have been rejected under 35 USC § 103(a) as being unpatentable over a combination of three references of Papadopoulos, Lindner and Bronikowski (6,947,798).

The relied upon teachings of Bronikowski are not prior art to the present invention, and thus cannot be asserted under 103(a), either alone or in combination with other references.

In making the above rejection, the Examiner cites col. 2, lines 2-12 and lines 44-46, col. 3, lines 60-64 and col. 7, lines 1-65 of Bronikowski. This language however, is found only in the Bronikowski 6,947,798 patent which was filed October 18, 2002 more than a year after the filing date of the present invention. While Bronikowski is a continuation in part on an earlier application (6,477,435), the language cited by the Examiner is not present in this earlier application. As such, the language cited by the Examiner in Bronikowski dates only to a filing date of October 18, 2002, after the filing date of the present invention.

The Applicant does not believe the references, alone or in combination, fairly teach an industrial controller that serves over the Web the necessary tools needed to create or modify control programs that may then be operated on with the industrial controller.

Applicant appreciates the panel's review and cordially invites the panel members to call the undersigned, should they consider any matters unresolved.

Respectfully submitted,

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Dated: 1-16-2007

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